



**State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2867



James M. Moran, Jr.  
22 Millstream Lane  
Penacook, NH 03303

High Peaks Roofing, LLC  
P.O. Box 2431  
Concord, NH 03302

**ADMINISTRATIVE ORDER  
No. WMD 01-14**

**October 12, 2001**

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to James M. Moran, Jr. and High Peaks Roofing, LLC pursuant to RSA 149-M:15, I. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. High Peaks Roofing, LLC is a New Hampshire limited liability corporation having a mailing address of P.O. Box 2431, Concord, NH 03302.
3. James M. Moran, Jr. is an individual having a mailing address of 22 Millstream Lane, Penacook, NH 03303.
4. James M. Moran, Jr. and High Peaks Roofing, LLC are herein collectively referred to as "High Peaks".

**C. STATEMENTS OF FACTS AND LAW**

1. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100-300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
2. High Peaks has conducted business operations at property located at 8 Maguire Street, Concord, NH, more particularly described in a deed recorded in the Merrimack County Registry of Deeds at Book 1987, Page 1369, and identified on the Concord Tax Map as Map 80, Block 1 Lot 4 ("the Site"). The Site is currently owned by the John J. Redden, Jr. Trust.

3. On July 24, 2001, DES received a complaint from the City of Concord alleging that High Peaks was dumping asphalt roofing shingles into a pit at the Site with the intent of burying them.

4. RSA 149-M:4, XXII defines "solid waste" in part, as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."

5. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product ... which is composed of wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."

6. Env-Wm 102.42 defines "construction and demolition debris" in part, as "non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes, but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals or other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks."

7. On July 25, 2001, DES personnel conducted an inspection ("July Inspection") of the Site. The purpose of the inspection was to determine High Peaks' compliance status relative to RSA 149-M and its implementing regulations, the Solid Waste Rules.

8. During the July Inspection, DES personnel met with James M. Moran, Jr., High Peaks President; Rene Cook, High Peaks Operations Manager; and Darryn Lawrence, High Peaks Marketing Director.

9. During the July Inspection, DES personnel observed the following:

- a. Two roll-offs marked Zero Waste; one was empty and one was full;
- b. One large pile consisting primarily of asphalt roofing shingles, a blue tarp and two crushed cars;  
A large area where earth had been disturbed. Asphalt roofing shingles were strewn about the area and some were partially buried;
- d. Waste consisting of, but not limited to, asphalt roofing shingles, metal, a car seat, cardboard, carpet, a garden hose, newspapers, a lattice fence, a child's plastic toy, a stockade fence, and a plastic tarp; and  
Seven piles of brick and concrete.

10. The asphalt roofing shingles, wood, cardboard, carpet, metal, and crushed cars observed by DES at the Site during the July Inspection are solid waste as defined by RSA 149-M:4, XXII.

11. During the July Inspection, DES personnel asked if asphalt roofing shingles had been buried at the Site. Mr. Cook informed DES Personnel that High Peaks had not buried asphalt roofing shingles at the Site.

12. As a result of the July Inspection, a Report of Initial Complaint Investigation ("RICI") was issued to High Peaks advising them to immediately cease operating an unpermitted solid waste facility, immediately cease transporting and disposing of solid waste at an unpermitted solid waste facility, remove all solid wastes at the Site by August 1, 2001, and to contact DES to arrange a date and time for test pits to be dug.

13. On August 1, 2001, DES personnel returned Mr. Cook's telephone call and spoke to Jennifer. She stated that Mr. Cook had called to request an extension to the August 1, 2001, deadline. DES personnel granted a one week extension to High Peaks to remove the solid waste.

14. On August 3, 2001, Mr. Moran contacted DES personnel to request an additional week to remove the solid waste. DES personnel informed Mr. Moran that on August 1, 2001, DES personnel left a message with his office advising High Peaks that one additional week was acceptable.

15. On August 9, 2001, DES personnel spoke with John Rice, JR Realty, an employee of the current Site owner. Mr. Rice informed DES personnel that he had dug two shallow test pits, approximately two feet deep, and found solid waste consisting of asphalt roofing shingles.

16. On August 9, 2001, the Site owner contacted DES relative to the complaint. The Site owner informed DES personnel that High Peaks no longer occupied office space at this Site.

17. On August 10, 2001, DES personnel conducted a follow-up inspection of the Site ("August Inspection"). As of the date of this inspection, High Peaks had not yet completed all of the items listed in the RICI, specifically the removal of all of the shingles and arranging a date and time to dig test pits.

18. During the August Inspection, DES personnel met with Mr. John Redden, Site owner. Mr. Redden informed DES that the pile of asphalt roofing shingles to the right of the office building was dumped while he was on vacation. When Mr. Redden asked Mr. Cook about the pile of asphalt roofing shingles, Mr. Cook advised him that one of High Peak's drivers had dumped the asphalt roofing shingles there.

19. RSA 149-M:4, IX defines a "[solid waste] facility" as "a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste."

20. The Site constitutes a "solid waste facility" as defined by RSA 149-M:4, IX

21. RSA 149-M:9, I states that "No person shall construct, operate or initiate closure of a public or private solid waste facility without first obtaining a permit from [DES]."

22. A review of DES files shows that High Peaks has neither applied for, nor holds a permit to operate a solid waste facility at any New Hampshire location.

23. RSA 149-M:9, II states that "It shall be unlawful to transport solid waste to, or dispose of solid waste at, any facility other than an approved facility."

24. During the July Inspection, Mr. Cook informed DES personnel that High Peaks brings waste asphalt roofing shingles to the Site from other job sites which are too small for staging a roll-off.

25. High Peaks transported solid waste to and disposed of solid waste at an unpermitted solid waste facility.

26. On August 21, 2001, DES personnel conducted a follow-up inspection of the Site. DES personnel compared the photographs taken during the August 10, 2001 inspection with the solid waste currently at the Site. DES personnel determined that additional solid waste had been brought to the Site. The solid waste included, but was not limited to: asphalt roofing shingles, cardboard, plywood, metal, a full unlabeled one-gallon container with yellow paint along the rim, a mailbox, a full one-gallon container of latex paint, household garbage, clothes, plastic, pink foam insulation, a NH license plate DEF543, and an "American Girl" magazine/catalog.

27. During the August 21, 2001 inspection, no changes were observed to the pile of solid waste to the right of the office.

#### **D. DETERMINATION OF VIOLATIONS**

High Peaks has violated RSA 149-M:9, I by operating an unpermitted solid waste facility.

2. High Peaks has violated RSA 149-M:9, II by transporting solid waste to and disposing of solid waste at an unpermitted solid waste facility.

#### **E. ORDER**

Based on the above findings, DES hereby orders High Peaks as follows

**Immediately** cease accepting or bringing any solid waste to the Site.

2. **Within 7 days** contact DES to arrange for test pits to be dug.

3. **By October 12, 2001**, remove all solid waste from the Site and dispose of it at a permitted solid waste facility. ← Amended 11/20/01 for deadline extension

4. Submit one written status report to DES by **October 17, 2001**, certifying that corrective measures have been implemented and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance, **including copies of disposal receipts**. ← Amended 11/20/01 for deadline extension

5. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Cheryl McGary, Waste Management Specialist  
DES Waste Management Division  
6 Hazen Drive  
Concord, NH 03301  
Fax: (603) 271-2456  
e-mail: [cmcgary@des.state.nh.us](mailto:cmcgary@des.state.nh.us)

#### F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve High Peaks of the obligation to comply with the Order.

#### G. OTHER PROVISIONS

Please note that RSA 149-M provides for civil and criminal penalties and administrative fines for violations of the statutes or any rule adopted by DES relative to the statute, as well as for violations of this Order. RSA 149-M:15 provides for civil forfeitures of up to \$25,000 for each day of a continuing violation, in addition to enforcement by injunctive relief. In the event that compliance is not achieved, DES may take further enforcement action against High Peaks by referring the matter to the New Hampshire Department of Justice for imposition of civil or criminal penalties. Please be advised that DES reserves the right to pursue administrative penalties for the violations noted above.

**COPY**

Philip J. O'Brien, Ph.D., Director  
Waste Management Division

**COPY**

George Dana Bisbee, Assistant Commissioner

Certified Mail/RRR: 7099 3400 0002 9769 8386

cc: DB/File  
✓ Gretchen Rule, DES Enforcement Coordinator  
Public Information Officer, DES PIP Office  
NH AGO  
City of Concord